

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

BILLIE JOE WINROW,)
)
Petitioner,)
)
v.) **CIV-06-527-R**
)
WALTER DINWIDDIE, Warden,)
)
Respondent.)

O R D E R

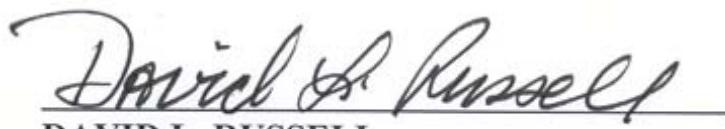
Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered June 2, 2006 and Petitioner's Objection to the Report and Recommendation filed June 8, 2006.

In support of his Objection to the Report and Recommendation, Petitioner argues that he is not challenging his conviction in Case No. CF-97-403 in the District Court of Pottawatomie County because he claims the information filed in that case was void and that he was denied due process when the district attorney appealed the quashing of the information and Petitioner's demurrer to the evidence. Hence, Petitioner asserts that this is a request for "Pre-trial Habeas Corpus Relief" and not a second or successive petition pursuant to 28 U.S.C. § 2254.

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court has conducted a *de novo* review. It is apparent from the Petition herein and Brief in Support of the Petition that Petitioner is herein attacking his conviction in Case No. CF-97-403 in Pottawatomie County. Thus, the Court agrees with the Magistrate Judge that this is a second or successive petition pursuant

to 28 U.S.C. § 2254 which the Court lacks jurisdiction to consider because Petitioner has not shown that he has received prior authorization from the Tenth Circuit Court of Appeals for this Court to consider it. Therefore, the Report and Recommendation [Doc. No. 6] is ADOPTED in its entirety and this case is TRANSFERRED to the Tenth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631 where Petitioner can seek authorization to pursue this second or successive § 2254 petition in accordance with 28 U.S.C. § 2244(b)(3).

It is so ordered this 15th day of June, 2006.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE